APPENDIX A

[SEAL]

COMPTROLLER OF THE CURRENCY
ADDRESS REPLY TO
"COMPTROLLER OF THE CURRENCY"

TREASURY DEPARTMENT
WASHINGTON

LETTER OF INSTRUCTIONS NO. 4
(Revised January 2, 1931)

SUBJECT—TAXES SOUGHT TO BE COLLECTED FROM THE RECEIVER OF AN INSOLVENT NATIONAL BANK OR THE ASSETS IN HIS HANDS.

For the reasons hereinafter stated, no tax is collectible from the receiver of an insolvent national bank, or from the assets in his hands except taxes assessed against the real property owned by the bank.

TAXES OF ANY CHARACTER ASSESSED BY THE UNITED STATES GOVERNMENT

All Federal taxes of every character are abated when a national bank becomes insolvent where the payment thereof would diminish the assets necessary for the payment of depositors in full. This abatement is provided for by Section 570, Title 12, United States Code, which reads:

"Insolvent banks as exempt from tax. Whenever and after any bank has ceased to do business by rea-

son of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him, is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors. (Mar. 1, 1879, c. 125, Par. 22, 20, Stat. 351; Mar. 3, 1883, c. 121, Par. 1, 22 Stat. 488)."

The above section is construed in Jackson vs. U. S., 20 Ct. Cl. 298 and Johnston vs. U. S., 17 Ct. Cl. 158. Where a demand is made upon the receiver to pay a Federal tax, or to file a return, and the payment of the tax would diminish the assets necessary to pay depositors in full, an affidavit to this effect should be executed by the receiver and forwarded to the Collector of Internal Revenue, inviting attention to the above act of Congress. This procedure should close the matter and if any difficulty is experienced, a complete statement of the facts should be forwarded to the Comptroller.

TAXES LEVIED BY THE STATES OR POLITICAL SUBDIVISIONS THEREOF

National banking associations being creatures of the Federal Government can be taxed by the state or its political subdivisions only as permitted by Congress. The full measure of the power of the state or its political subdivisions to tax such associations is prescribed by Section 548, Title 12, United States Code, and a full list of cases discussing the extent of taxation permitted may be found in the United States Code Annotated, following the section referred to. As receivers are

concerned with the effect of the provisions of this section upon the assets of the bank in their hands, our discussion will be limited accordingly.

Taxes assessed against the personal property owned by the bank whether levied prior to or subsequent to suspension are void, hence uncollectible. Owensboro National Bank vs. Owensboro, 173 U.S. 664. Although Congress by the provisions of Section 548, above referred to, has permitted the state authority to assess taxes imposed on the capital stock of the bank against the bank as agent (Merchants Bank vs. Pennsylvania, 167 U.S. 461), this right is cancelled by the bank's insolvency. Where a national bank is insolvent and has passed into the hands of a receiver, a tax assessed against the shares of the bank, to the bank as agent, cannot be collected from the receiver or from the assets in his hands. City of Boston vs. Beal, 51 Fed. 306; Brown vs. French, 80 Fed. 166; Stapylton vs. Thaggard, 91 Fed. 93. It thus appearing that personal property taxes of any character levied prior to or subsequent to suspension and any capital stock taxes assessed to the bank as agent are uncollectible from the receiver or from the assets in his hands, it follows that the only taxes collectible from the receiver are those levied against the real estate owned by the trust, Section 548, above referred to, providing: "Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real estate is taxed."

The Federal authorities control these questions because of your right as receiver to have any action seeking to collect taxes, other than real estate taxes, adjudicated in that court, independent of the amount involved, as suits to wind up the affairs of a national bank. See Studebaker Corporation of America vs. First National Bank of Florence, 10 Fed. (2d) 590, and Larrabie Flour Mills vs. First National Bank of Henryetta, 13 Fed. (2d) 330. That the state courts of officers are power-

less to interfere in any way with the administration of yo
trust in this connection is clear from the following excer
from the decision of the Supreme Court of the United Stat
in Earle vs. Commonwealth of Pennsylvania, 178 U.S. 44
454:

> "We must not, however, be understood as holding that the distribution of the bank's assets in the hands of the receiver—could have been in anywise directly controlled by the state court or seized under an attachment or execution in the hands of any state officer. On the contrary, the direction in the statute that the receiver pay over all moneys realized by him from the assets of the bank to the Treasurer of the United States, subject to the order of the Comptroller, furnished a rule of conduct for him which neither an order of nor any proceedings in the state court could affect, modify or change. The scheme of the statute relating to suspended national banks is that from the time of a bank's suspension all its assets, of whatever kind, as they are at the time of suspension, pass in the first instance to the receiver, the proceeds thereof to be distributed by the Comptroller among those whose claims are proved to his satisfaction or are adjudicated by some court of competent jurisdiction. So when the Chestnut Street National Bank suspended and went into the hands of a receiver, the entire control and administration of its assets were committed to the receiver and the Comptroller, subject, however, to any right of priority previously acquired by the plaintiff through the proceedings in the suit against Long."

Where county or other taxing officials acting under state
authority seek to collect taxes other than taxes levied against
the trust's real estate, every effort should be made to con-

vince them that such taxes are uncollectible. Ordinarily, a presentation of this letter to the county attorney should convince him that the taxes other than real estate taxes are uncollectible. If, for any reason, the county officials do not concur in the views set out herein, we would be pleased to consider their views to the contrary.

Yours very truly,
J. E. FOUTS, *Supervising Receiver,*
Division of Insolvent National Banks